

## **The Concept of a Work in Copyright Law**

### **Abstract**

The theme of the work is the author's creation, its concept in the legal definition and further in the meta-legal sense, ie as defined by the authors' work of art, on the one hand by artists, on the other by artistic institutions.

And, the related delimitation of this concept, its limits or extensions. On the one hand, the concept of an author's work seems to be expanding in practice, on the other hand, it narrows, as I will explain.

This means that I must first take a closer look at the concept of a work in the sense of copyright law. It is a central concept of the entire copyright law, however, and perhaps because of this, its definition under this law is very vague. After the introduction, where I tried to think about the definition and practical possibilities of legal science, in the 1 Chapter I deal with the legal definition of the concept of the work in general and then the concept of the author's work. I think its legal definition, to a certain extent, revolves around a circle, the author's work is the result of the author's creative activity and the author is the person creating the author's work.

It doesn't make much sense, and historically. However, this corresponds to the definition according to the authors' convention and historically the definition is sufficiently used. Furthermore, in Chapter 1 I deal with the case law definition of the term, both by own courts and especially in the case law of the CJEU.

If we begin to analyse the individual legal definitions, we get to more and more ambiguities. It is not all that clear, where creativity begins and where it ends. What falls under the term literature? What is still a work of art and what is no longer. These questions are pointed out in a book by a well known French philosopher Michel Foucault – Discourse, author, genealogy, I chose as a philosophical basis. The other philosopher I draw from is, of course Hegel, then a sociologist Max Weber, postmodern philosopher Umberto Eco and structuralist Pierre Bourdieu. From Czech authors it is mainly Václav Belohradský, Václav Magid and Pavlína Morganová.

The questions I ask myself are not legal questions, but primarily philosophical and aesthetical questions, because the law here operates with the terms of these disciplines, but does not explain them in more detail, as I have pointed out above. These are therefore meta-legal problems, or said by the language used in court decisions, factual questions. In this work

I will probably describe the theoretical background on which I will base the analysis of the texts and what we can deduce from them for the practical application of the law. At present society's attitude to copyright is changing on a global scale, the current paradigm is questioned, not so much in theory, but in practical behaviour of both creators and consumers, thus those subjects on which is author's work essentially dependent. The fact is that the media are already talking about the need to adapt to „modern times“, and is often without making it clear how this should happen, what „modern times“ actually demand. The only requirement that comes out of these media utterances is that nothing should be paid for the use of copyright, while this requirement

Is either sheer hypocrisy or insufficient mental capacity of the speaker and is often shrouded in passwords about internet freedom for all its users. In my opinion this is primarily a problem what to subordinate to the term work.

Later I will present the individual specific situations and the opinions of the active participants. For example, the art groups Ztohoven and Pödebal. Their activities are a work of art or they are a political activity, i.e. not an artistic one. The second level is represented by the opinions of so called pirates, people who speak for those downloading free music and movies and copying books, not only within the legal scope, i.e. for one's personal use. I dedicate the final Chapter to an attempt to distinguish politically engaged art from political activism without artistic ambition.

**Keywords:** author, work, art